

# **Exhibit 1**

1

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1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

2  
3 HAWKNET, LTD.,

3  
4 Plaintiff,

4  
5 v.

07 Cv. 5912 (NRB)

5  
6 OVERSEAS SHIPPING AGENCIES,  
6 et al.,

7  
7 Defendants.

8  
8 -----x

9  
9 April 10, 2008  
10 5:00 p.m.

10  
11 Before:

11  
12 HON. NAOMI REICE BUCHWALD

12  
13 District Judge

13  
14 APPEARANCES

14  
15 BURKE & PARSONS

15 Attorneys for Plaintiff

16 KEITH W. HEARD

16  
17 EATON & VAN WINKLE LLP

17 Attorneys for TOM Shipping Vermittlung

18 MICHAEL O. HARDISON

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1 (Case called)

2 THE COURT: Can we get the appearances for Hawknet,  
3 please?

4 MR. HEARD: For plaintiff Hawknet is Keith Heard of  
5 the law firm of Burke & Parsons.

6 THE COURT: And for the nonparty TOM Shipping.

7 MR. HARDISON: Michael Hardison with the firm of Eaton  
8 & Van Winkle LLP.

9 THE COURT: I think that, given the amount of paper  
10 and sort of charges and questions, the best way to proceed is  
11 to ask Mr. Heard to go item by item as to what evidence you  
12 rely upon to assert that TOM Shipping is a successor or related  
13 entity to the group of defendants Overseas.

14 MR. HEARD: Thank you, your Honor.

15 If I may, I would like to tell the whole story because  
16 I think that the TOM piece of it is more understandable when  
17 it's plugged in. I am not going to belabor this.

18 THE COURT: I just want to tell you that I have read  
19 all the papers one time. I have read the amended complaint,  
20 not the second amended complaint. So I start with the  
21 understanding that it's your position that the defendant  
22 entities as a group are one, effectively.

23 MR. HEARD: Correct.

24 THE COURT: So I will just let you know that.

25 MR. HEARD: I apologize. I can go right from there to  
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1 TOM Shipping.

2 Hawknet instituted the attachment action last year,  
3 and we had success on that in early September. September 12 we  
4 were called by HSBC Bank that there was a small effected  
5 attachment at the bank, about \$3800, and the money was being  
6 wired through for the account of Mos Overseas.

7 Shortly after that time, TOM Shipping Vermittlung was  
8 formed in Hamburg.

9 In early January, January the 7th, we achieved our  
10 second attachment of funds belonging to Mos Overseas at the  
11 Bank of New York Mellon in the amount of slightly more than  
12 \$22,000.

13 For both of these attachments, I faxed notice to Mos  
14 Overseas, as required by this court's local rule.

15 In that same month of January, after our second  
16 attachment of funds, clearly belonging to Mos Overseas,  
17 Mr. Rahimzadeh, according to his declaration, went to the  
18 Hamburger Sparkasse bank and opened a bank account.

19 For starters, we find it curious that a company would  
20 be set up and nothing would be done to establish a bank account  
21 for four months.

22 Mr. Rahimzadeh is 76 years old. In his declaration,  
23 he declares that he was the chartering manager of Mos Overseas  
24 until he set up the bank account that I just described in  
25 January. Presumably, as a chartering manager at Overseas, he

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1 was aware of those two attachments that were effected.

2 MR. HARDISON: If I may interrupt briefly, Mr.  
3 Rahimzadeh did not make any such statement in his declaration.  
4 He said he is the general manager of TOM Shipping.

5 MR. HEARD: Pardon me. Let me check that. If I am  
6 wrong, I will retract what I said.

7 THE COURT: I have it open. He says, I am the  
8 managing director and a shareholder of TOM Shipping. He says  
9 in the next paragraph, I previously worked for a company called  
10 Mos Overseas Shipping.

11 MR. HEARD: That's what I was referring to, your  
12 Honor. I thought he said he was the chartering manager. If I  
13 am wrong about that, I apologize. There was an earlier  
14 declaration that we were given. Perhaps it was stated there.

15 In any event, he does confirm that he was an employee  
16 of Mos Overseas. The capacity really doesn't matter that much.  
17 He worked for Mos Overseas.

18 He is a shareholder in TOM Shipping. There are two  
19 others. A woman named Amelashi, that's her last name, she is  
20 22 years old, and a woman whose last name is Montanag, she is  
21 49 years old.

22 In the articles of incorporation for the company,  
23 which is Mr. Hardison has put forth before the Court, these two  
24 ladies state their address as Harvestehuder --

25 THE COURT: I think your pronunciation is impressive  
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1 up to now. I am not even going to try.

2 MR. HEARD: I studied German when I was in high  
3 school. Harvestehuder Weg 79. That's the address they gave.

4 We sent an investigator to that address.

5 Mr. Bimschas, whose declaration is before the Court, had one of  
6 his colleagues go to that address.

7 It's a residential building. That's fine. They  
8 didn't have to put down a commercial listing. But you might  
9 expect to see their name on the nameplate. There are five  
10 nameplates at that address. Mr. Bimschas's colleague took a  
11 photograph of the nameplate, and that's before the Court as  
12 Exhibits J and K to his declaration. The name Amelashi does  
13 not appear there. The name Montanag does not appear there.  
14 But the name Majdpour does appear there, your Honor. And the  
15 name Majdpour appears throughout our amended complaint and our  
16 proposed second amended complaint. With the exception of Hoday  
17 General Trading, every defendant in this case has Majdpours as  
18 their shareholders and their directors.

19 Additionally, Gulf Overseas General Trading also has a  
20 man named Montanag, same last name as the woman who is a  
21 shareholder in TOM Shipping, as one of its shareholders. That  
22 information appears in the Great Page report, which is Exhibit  
23 B to my declaration.

24 So although TOM purports to be an independent company,  
25 we have one clear connection right there with the Majdpours,

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1 two of the three shareholders live at the address where the  
2 Majdpours are.

3 According to Mr. Rahimzadeh, the company's address is  
4 Forster Weg 22 in Hamburg.

5 Mr. Bimschas himself went to that location and he took  
6 a photograph. The photograph is Exhibit D to his declaration.  
7 It's just a residential apartment building. It's not a  
8 commercial address. It's not a business address. There is a  
9 nameplate there for Rahimzadeh, that's Exhibit G. It's a poor  
10 photograph. We apologize for that, but I believe you can make  
11 out the Rahimzadeh name, your Honor, to Mr. Bimschas's  
12 affidavit. That shows him there, but don't necessarily show  
13 the company there.

14 When the bank account was formed for TOM Shipping at  
15 Hamburger Sparkasse Bank in January, the address the bank put  
16 on the account was TOM Shipping, care of Mos Overseas Shipping  
17 Vermittlung, Neuer Wall 8, Hamburg.

18 Now, in his declaration, Mr. Rahimzadeh says, Well,  
19 that's wrong. The only possible explanation for that could be,  
20 when I went to the bank to open the account, I was asked for a  
21 business card, and all I had was my Mos Overseas business card,  
22 so that's what I gave to the bank, and they must have taken the  
23 name and the address from that business card.

24 It's possible he did that, but it seems odd if he has  
25 got his own company, which has been up and running for four

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1 months, that he doesn't have his own business cards now. We  
2 don't even know that he has his own business cards today. We  
3 haven't seen any. They haven't been put in as an exhibit in  
4 this case.

5 I submit that there is another explanation as to why  
6 the bank's records for this account showed the address as TOM  
7 Shipping, care of Mos Overseas. I think that's the address  
8 that Mr. Rahimzadeh gave to the bank either verbally or by  
9 filling out a form that we haven't seen.

10 Corroboration of the address that TOM Shipping is  
11 located care of Mos Overseas can be found on the Internet. I  
12 have attached to my declaration, your Honor, Exhibit F -- I am  
13 sorry, Exhibit G is a screen print of a German language Web  
14 site. It identifies TOM Shipping Vermittlung GmbH, the same  
15 company. The address given is the Neuer Wall 8 address for Mos  
16 Overseas. If you flip back to the prior exhibit, your Honor,  
17 Exhibit F to my declaration, you will see a screen print from  
18 the same Web site for Mos Overseas showing the same address.

19 I should have had this translated for the Court, and I  
20 apologize for not doing that. I didn't think to put this into  
21 my papers until yesterday. I called a friend of mine who  
22 speaks German. Firmen wissen, basically means company, Firmen  
23 is company, knowledge. So, as I put in my declaration, this is  
24 a German guide to business Web site.

25 That is the only information I could find on the  
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1 Internet at all about TOM Shipping. And the address it shows  
2 is the Mos Overseas address, which is the same address that the  
3 Hamburger Sparkasse Bank had on its account.

4 Another interesting fact is that TOM Shipping does not  
5 have a telephone listing in Hamburg. Mr. Bimschas who works in  
6 Hamburg checked that for us and has submitted the computer  
7 screen print from directory assistance in Hamburg as Exhibit F  
8 to his declaration, your Honor. If we look at the second page  
9 of Exhibit F, there is information on Mos Overseas. Their  
10 address is shown, their telephone number, even a fax number.  
11 But when Mr. Bimschas put in the name TOM Shipping Vermittlung,  
12 the Web site said no entry found for your input.

13 What kind of international shipping company doesn't  
14 have a telephone number? That seems very odd. Unless they are  
15 operating out of somebody else's office and that office has the  
16 telephone number.

17 There are some other links, your Honor, and they  
18 relate to ships. One ship is the JOUDI. The money that was  
19 attached at the Bank of New York Mellon, which is the subject  
20 of this hearing, was a freight payment that was being made on  
21 that ship. The ship is managed by Blue Fleet Marine. It was  
22 time chartered to a company in Singapore named Brooklands  
23 Planning, and according to TOM Shipping's documents, it was  
24 voyage chartered by Brooklands down to TOM Shipping. That's  
25 what they contend.

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1 William Cook is the chartering manager of Hawknet.  
2 Mr. Cook made some inquiries with his market sources to see  
3 what he could learn about the transaction involving the JOUDI.  
4 He talked to a gentleman at Blue Fleet, which is the vessel  
5 manager, and asked him what he understood about the identity of  
6 the subcharterer, the company that was under Brooklands, and he  
7 indicated that it was something like Overseas.

8 THE COURT: That's a lot of hearsay.

9 MR. HEARD: It is, your Honor.

10 MR. HARDISON: Speculation as well.

11 MR. HEARD: We don't know that it's speculation if  
12 that's what the man knew. It's not a trial. Our standard is  
13 just a prima facie standard. I am not submitting that as the  
14 overriding piece of evidence, but it's consistent with  
15 everything else I am going to offer to the Court today.

16 I would point out that the Great Page investigative  
17 report states that Overseas Shipping Agencies is the lead  
18 company in the Majdpour group. It was also the agent for this  
19 ship at the discharge port. There is no speculation about  
20 that. That is shown right in the fixture recap that TOM  
21 Shipping has submitted to the Court.

22 A fixture recap, after negotiations for a vessel  
23 charter are completed, a recap is prepared that summarizes the  
24 essential terms of what was agreed and it's sent out to both  
25 parties. And until a longer printed form of a charter party is

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1 prepared, the fixture recap is the agreement between the  
2 parties. That's what they would look to until a more complete  
3 document was prepared.

4 The fixture recap has been submitted as Exhibit 2 to  
5 Mr. Rahimzadeh's declaration. It names the ship on the first  
6 page. It names TOM Shipping.

7 On the second page, your Honor, this is Exhibit 2 to  
8 Rahimzadeh's declaration, about eight lines from the top, it  
9 says owner's agents, that means the ship owner's agent at the  
10 load port. But the charterer's agent is at the discharge port.  
11 The charterer is identified in this document as TOM Shipping,  
12 and they appointed Overseas Shipping Agencies as the discharge  
13 port agent for that vessel.

14 Overseas is located in Iran. Many of the defendants  
15 in the amended complaint and the proposed second amended  
16 complaint are Iranian companies. This ship carried a cargo of  
17 phosphate from a port in Lebanon to Bandar Abbas, Iran. The  
18 information Great Page developed was that Overseas was actually  
19 involved with the cargo as a buyer of the cargo. In the reply  
20 papers that have been submitted today, TOM Shipping disputes  
21 that. They cast that as a transaction between TOM Shipping and  
22 an unrelated entity in Iran. However, if, as we contend, and  
23 as we believe the evidence shows, TOM Shipping is nothing more  
24 than an alter ego for Overseas, then the information that Great  
25 Page has developed is not inconsistent.

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1           There is still another link between the JOUDI and the  
2 Majdpour companies. Getting back to the same Exhibit 2 to Mr.  
3 Rahimzadeh's declaration, your Honor, this is the fourth page  
4 down, the fixture recap is normally prepared by a charter party  
5 broker. The broker in this transaction was George Lemos. His  
6 name appears right there toward the end before the telephone  
7 numbers. The brokerage company where he is employed, and it  
8 may be his own company, I don't know, is Sea Challenger  
9 Maritime, Ltd.

10           The evidence indicates that Sea Challenger and  
11 Mr. Lemos have been intimately involved with the Majdpours.  
12 Mr. Lemos previously worked for a company called V Ships.  
13 That's in the Great Page report. When he was at V Ships, he  
14 acted as a charter party broker for the Majdpours. He did  
15 business with Mos Overseas. Great Page spoke to Mr. Lemos and  
16 he confirmed that. He says, unfortunately, he is not doing  
17 business with Mos Overseas now because of the Iranian  
18 situation, I think is how he described it.

19           I would submit to the Court that Mos Overseas is  
20 probably lying low and is not in the market because of this  
21 attachment that we have. They can't send funds in U.S. dollars  
22 because of the attachment.

23           Taking it a step further, Great Page asked Mr. Lemos,  
24 What about TOM Shipping?

25           THE COURT: You're sort of repeating everything, but  
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1 there is a lot of supposition in this list. And maybe in the  
2 end, if you get 20 suppositions, that's good enough. But what  
3 are the really hard pieces of evidence?

4 For example, you have read my earlier decision, which,  
5 unfortunately, I left upstairs.

6 MR. HEARD: Fesco?

7 THE COURT: Fesco. There you have a situation where  
8 the related party is paying the bills. It's very tangible.  
9 You have cases that you have overlapping officers, overlapping  
10 shareholders. We don't have any overlapping officers, we don't  
11 have any overlapping shareholders, at least not on paper.

12 I understand that you have a nameplate. I am not  
13 saying it's irrelevant. You have argued that there is no phone  
14 for TOM Shipping. It's a piece. I am not saying it's not a  
15 piece. But the question is, What is the really hard stuff?  
16 Because they have documents, it seems to me, which at least  
17 have other names on them that seem to show an independent  
18 transaction.

19 Why don't you just continue?

20 MR. HEARD: I am informed by your questions.

21 One thing I think is very important, and TOM Shipping  
22 have ostensibly answered this question, but I don't think they  
23 have really answered it, is what is the source of the money  
24 that was being transferred?

25 THE COURT: Right. I think that's a very important  
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1 question.

2 MR. HEARD: I didn't ask for it until Monday because I  
3 didn't find out about the particular transaction until Monday.  
4 Mr. Bimschas went to the Hamburger Sparkasse bank. Mr.  
5 Rahimzadeh was there with his lawyer, and he was shown the  
6 account information and he got a screen print of it, and that's  
7 before the Court. What that shows is 1.6 million euros came  
8 into an account that had had no prior activity on Monday -- I  
9 think it was Monday -- March 17, and then went out, pursuant to  
10 his instructions, the very next day as U.S. dollars.

11 It came in as euros, which would not have been  
12 attached in New York, if any of these defendants' names had  
13 been on them, because euros don't pass through New York,  
14 dollars pass through New York. It went into his account as  
15 euros. He told the bank to send dollars to Singapore. If  
16 dollars are going to Singapore under the TOM Shipping name,  
17 then it sails under the attachment in this case because none of  
18 these defendants have their names on it. But the bank put the  
19 address on it that they had for the account, which was care of  
20 Mos Shipping.

21 Mr. Rahimzadeh doesn't know for a fact that the bank  
22 put that address on the account from the business card that he  
23 says he gave them in January. What he says is the only  
24 possible explanation could be. Well, that's very convenient  
25 for him, but I haven't seen an affidavit from anybody in the

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1 bank saying, He gave us a business card that said Mos Shipping,  
2 Neuer Wall 8, and said that's his address and that's the  
3 address we put on the account. He could have said at that time  
4 put down Forster Weg. Instead, he gave them a Mos Overseas  
5 address.

6 We think that's a possible indication at that time, if  
7 not even now, he was still working out of the Mos Overseas  
8 office. It just seems strange that you go in for one company  
9 to set up a bank account, and when you are asked for that  
10 company's address, you give a business card for another  
11 company. It stands to reason, no matter what the language  
12 difficulties might have been, you might think, if I do this,  
13 the bank is likely to put down the address that appears on the  
14 business card.

15 The bank does not put in any declaration saying that  
16 that was a mistake they made, so we don't know what happened in  
17 January and why the Mos Shipping name and address appear on  
18 that bank account. But because they did appear on that bank  
19 account, when the Hamburger Sparkasse bank wired the money out,  
20 it wired it out for the benefit of TOM Shipping, care of Mos  
21 Overseas, at the Mos Overseas address.

22 On the source of the funds, your Honor, Mr. Bimschas  
23 saw the screen print. He sees the transfer coming in and he  
24 sends it to me. I got it translated. On Monday afternoon,  
25 after I got the screen print that day, I sent an e-mail to Mr.

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1 Hardison and basically saying, I want to know the source or  
2 origin of the funds that wound up in that account on March 17.

3 In the reply papers, what we are told is Mr.  
4 Rahimzadeh transferred money from one TOM Shipping account into  
5 another TOM Shipping account. I think that's what the reply  
6 papers say. But the question that begs is: How did the money  
7 land in the first TOM Shipping's account? Why does he have two  
8 accounts? It's a three-person company, arguably a two-person  
9 company, there are only two directors, run out of a house. Why  
10 does he need two bank accounts? But he has got two.

11 And the money was transferred from one to the other,  
12 but that doesn't tell us who put the money in that bank  
13 account. Did it come from Mos Overseas? Did it come from  
14 Overseas Shipping Agencies? I believe that those are truly  
15 legitimate questions, because if they set up this company to  
16 get around this attachment, they can get around the attachment  
17 by sending euros to another company that they have set up, and  
18 then that company can transmit dollars. The dollars go through  
19 New York, but if the transfer doesn't have the defendants' name  
20 on it, the defendants have defeated the attachment, and I think  
21 that's what was being attempted here. But it got frustrated  
22 because of the presence of the Mos Shipping name on the bank's  
23 address information for the account.

24 THE COURT: Wouldn't producing the ultimate source of  
25 the funds just bring this whole thing to an end if you're

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1 right?

2 MR. HARDISON: Your Honor, we have put documentation  
3 in, my second declaration, that shows where the money came  
4 from. It's another account for TOM Shipping. Hawknets has no  
5 evidence whatsoever that any money was being transferred  
6 between any of the defendants and TOM Shipping, or that TOM  
7 Shipping was transferring money to any of the defendants or on  
8 behalf of any of the defendants.

9 Now, he says, I can't believe the general manager for  
10 TOM Shipping's story that this all resulted from  
11 miscommunication about a business card. The bank has confirmed  
12 that. If you look at Exhibit 7 to the Rahimzadeh declaration,  
13 there's two things there, your Honor. Number one, it says that  
14 they confirm that the correct address for TOM Shipping is the  
15 address that we say is the correct address. They also say, On  
16 the occasion of the opening of the above-mentioned account,  
17 you, Mr. Rahimzadeh, were asked for the address of TOM  
18 Shipping.

19 THE COURT: Can you just give me a moment?

20 MR. HARDISON: This is Exhibit 7 to the Rahimzadeh.

21 THE COURT: To the moving papers?

22 MR. HARDISON: Yes. It's the declaration that has  
23 both captions on the first page.

24 THE COURT: So this document from the Hamburg bank  
25 says that the original account contract had no address, is that  
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1 correct?

2 MR. HARDISON: That's correct. That directly rebuts,  
3 of course, the earlier speculation that there was some other  
4 document that was signed at the time of the opening of the  
5 account that had the Mos address on it. The bank says right in  
6 their own letter that there was no address on any of those  
7 documents. The documents are attached to the letter.

8 THE COURT: Then the correct address is added on April  
9 6.

10 MR. HARDISON: March 26, next to the last paragraph on  
11 the first page.

12 THE COURT: I am sorry.

13 So that's after the problem arises?

14 MR. HARDISON: Yes. If you had looked at the other  
15 exhibits, your Honor, looking at exhibit, I think it's 3 to  
16 this same declaration, the request to make the wire transfer  
17 was made on March 17. That's Exhibit 3. The wire transfer  
18 itself, which is Exhibit 4, took place on March 18, the next  
19 day. The bank says that when the account was opened, it used  
20 the business card address, that says, Following this, we copied  
21 care of Mos Overseas into our database.

22 So from January when the account was opened they have  
23 the incorrect address in there. That incorrect address  
24 remained in there until March 26. So on March 17, which was  
25 before March 26, and on March 18, when the wire transfer took

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1 place, the only address the bank had for TOM Shipping was care  
2 of Mos, and that's how come it wound up on the wiring  
3 instructions. Despite the fact that if you look at the payment  
4 instructions, which is Exhibit 3, that Mr. Rahimzadeh gave the  
5 bank, he uses the correct address, which apparently is his  
6 residence.

7 I am told by people that are knowledgeable with wire  
8 transfers that what happens when a wire transfer takes place is  
9 all the bank has to do with the computer systems we have today  
10 is they type in the account number. Everything else is  
11 automatic. So if in the system there is an incorrect address  
12 and the bank doesn't even write it out itself, everything is  
13 being done by computers, then you're not going to catch a  
14 mistake like that.

15 It strikes me as odd that we go from an incorrect  
16 address on a wire transfer to saying that TOM Shipping is in  
17 cahoots with the defendants. That seems kind of a stretch.

18 MR. HEARD: May I speak to this point?

19 THE COURT: Sure. Absolutely.

20 MR. HEARD: I read letters the same way I read  
21 statutes of contracts, very carefully. It causes problems with  
22 my wife sometimes, but she is not here.

23 This is speculation by the bank. They are saying,  
24 Maybe you misunderstood the question -- in other words, asking  
25 for his company address -- maybe you misunderstood the question

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1 for the address due to linguistic difficulties. He lives in  
2 Hamburg, he works in Hamburg, he worked for Mos before he set  
3 up TOM Shipping, and somebody asked him for his address and he  
4 doesn't know what that means? That seems far-fetched, but  
5 let's take it a step further.

6 He is in a German bank. Presumably, the person in the  
7 bank who asked him for this information would understand  
8 whether he got it wrong or not. Because if the guy at the  
9 bank, the bank officer says, We need an address for TOM  
10 Shipping, and if Mr. Rahimzadeh gives him a business card for  
11 another company, it's not a linguistic problem, because  
12 presumably the German bank officer will look at that and say,  
13 No, no, not for some other company, I need an address for TOM  
14 Shipping, and presumably would hand it back to Mr. Rahimzadeh.  
15 But that didn't happen here.

16 MR. HARDISON: I don't think counsel was present when  
17 this took place so he is not in a position to say that's not  
18 what happened here.

19 MR. HEARD: Well, this is maybe. This is maybe. I am  
20 not arguing with Mr. Hardison. I am trying to understand the  
21 evidence that they are placing before the Court. This person  
22 who wrote this letter at the Hamburger Sparkasse bank, he  
23 doesn't say in here that he was present when Mr. Rahimzadeh was  
24 there and opened the bank account. We know what happened here.  
25 Mr. Rahimzadeh's story is about the business card. He goes and

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1 explains that to the bank and the bank writes him a letter and  
2 says, That must be it, you gave us a Mos Shipping business card  
3 and we used that to put the Mos Shipping address on this  
4 account you opened for TOM Shipping, which is supposed to be a  
5 completely different company.

6 Now, this sentence can be read in a slightly different  
7 way than Mr. Hardison read it. Maybe you misunderstood the  
8 question for the address due to linguistic purposes, and maybe  
9 you handed over your business card from your former employer,  
10 Mos Overseas Shipping Vermittlung.

11 Then it says, Following this. When? Just at some  
12 point afterwards. It doesn't say, Because of this, we copied  
13 care of Mos Overseas into our database.

14 With respect to the database, your Honor, I would like  
15 to point out something. Mr. Bimschas obtained a screen print  
16 of the bank's database on Monday and sent it to us. We had it  
17 translated. That is Exhibit A to Mr. Bimschas's declaration.  
18 Since this attachment took place, there have been 14 -- I  
19 counted them as I was sitting here waiting for the hearing to  
20 begin -- there have been 14 amendments by the bank in  
21 information for this account. I don't know what is going on  
22 here, but there seems to be a lot going on at this bank with  
23 respect to this particular account, and we don't know what the  
24 explanation is for 14 changes to the bank's database  
25 information for this one company.

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1 I do submit, your Honor, that as you stated, it's not  
2 inappropriate to find out where this money came from. If I  
3 were in Mr. Hardison's shoes, I would have said we will get  
4 that information. I put in my papers in opposition yesterday.  
5 The reply papers took one day and they contain the information  
6 that's offered about the money being transferred in from  
7 another TOM Shipping account. If we could wait one day, maybe  
8 we can find out what the ultimate source of that money was. I  
9 don't think that's an inappropriate request by the plaintiff.

10 MR. HARDISON: The problem from TOM Shipping's  
11 standpoint, your Honor, is they have asked for documentation.  
12 We have given them the documentation. Then they say we need  
13 something else so we give them something else. Then we need  
14 more. Our client wants the funds released. They are just  
15 dragging this on and on and on on the basis of no evidence.

16 MR. HEARD: If I may respond to that, your Honor.

17 I asked for the information about the source and  
18 origin of the funds on Monday. The response I got from Mr.  
19 Hardison on Tuesday after I reminded him of my request was:  
20 TOM Shipping's position is you now have enough information to  
21 know that the funds that were attached belong to TOM Shipping.  
22 If he had given me on Tuesday the document that he now puts  
23 before the Court in his reply papers stating that the money was  
24 transferred in from another TOM Shipping account, I would have  
25 asked him on Tuesday for the origin or source of it. That's

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1 the language I used in my request on Monday. I want to know  
2 what the origin or the source of the funds is. Not that it was  
3 simply transferred from another TOM Shipping account, how did  
4 this money come into TOM Shipping's hands.

5 MR. HARDISON: I think counsel is reaching, and I  
6 think his client is reaching.

7 THE COURT: It seems to me the Court's decision  
8 shouldn't turn on things such as is TOM Shipping operated out  
9 of someone's home? It's just not that staggering either way.  
10 But the way to truly bring this to an end is to learn what the  
11 source of the funds are and just to see if it traces back to  
12 any of these defendants. If it doesn't, it doesn't. In other  
13 words, I am not going to say that because two companies use the  
14 same broker, therefore they must be related.

15 These are issues that raise questions. There is one  
16 way to put it to bed, and that seems to me to be the best thing  
17 to do, because right now I can't tell you how I am going to  
18 rule, and I can tell you that I am not ruling by tomorrow or  
19 the next day because I am just really too jammed. So it can be  
20 brought to an end faster than my review of this material again  
21 and checking the cases and sort of seeing on what side of the  
22 line does this all fall.

23 MR. HARDISON: If I may speak, your Honor? I can  
24 certainly pass along your view and see if there is some other  
25 way that we can work this out other than having you have to --

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1 THE COURT: I am not trying to avoid the work. I am  
2 just sort of saying there is something that is more definitive  
3 than anything I can say. I pick one side or the other.  
4 Somebody goes up on appeal. It takes time. It isn't that I  
5 have not ruled on these type of issues before. I have. But  
6 it's more of a scientific way to resolve it rather than leaving  
7 it as a matter of judgment, How does this fact weigh in the  
8 picture? In this context, how much reliance can we place on  
9 this hearsay? That's all I am saying.

10 MR. HARDISON: May I speak?

11 THE COURT: Yes.

12 MR. HARDISON: Two things here. I understand that the  
13 bank that transferred the money to the Haspa Bank deals with  
14 the Iranians and that people use that bank because things  
15 happen faster using that bank if you're dealing with Iran than  
16 if you're dealing with just a regular German bank.

17 So let's assume that the funds came from company ABC  
18 in Iran to the bank in Germany and then were transferred from  
19 the Iranian bank in Germany to the Haspa Bank.

20 Now, ABC is not one of the defendants and is in no way  
21 connected with one of the defendants.

22 THE COURT: Then you have won.

23 MR. HARDISON: Not necessarily. I would hope so, but  
24 what I expect to happen is he is going to say, Who gave the  
25 money to ABC? How do we know it didn't come from Mos?

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1 MR. HEARD: There would have to be an end to our  
2 legitimate inquiries, your Honor, but I don't think we are  
3 there yet.

4 MR. HARDISON: Where is it going to be?

5 MR. HEARD: The source of the funds is not suspicious.  
6 If it's not one of the named defendants in this case, if it's  
7 not a Majdpour company, it's over, isn't it?

8 THE COURT: I think it's over.

9 MR. HARDISON: That's fine with me.

10 THE COURT: We are all in agreement as to where the  
11 game comes to an end.

12 MR. HARDISON: That's fine, your Honor, as long as we  
13 have got a cutoff point.

14 THE COURT: We have got a cutoff point.

15 MR. HEARD: Thank you.

16 THE COURT: Very good. Thank you. You will let me  
17 know.

18 MR. HARDISON: Will do.

19 MR. HEARD: I apologize. I just want to make you  
20 aware of one other development that has happened today. There  
21 are two cases against the Overseas defendants. There is a case  
22 before you and there was a case before Judge Batts. The  
23 complaint in the case before Judge Batts is Exhibit A to my  
24 declaration.

25 THE COURT: Oh, OK. I probably didn't look at that.

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1 MR. HEARD: That's fine, your Honor.

2 TOM Shipping has made a similar motion in that case.

3 The plaintiff in that case filed an amended complaint this  
4 morning and Judge Batts denied TOM Shipping's motion as moot.

5 I have a copy of the order that she entered today if you would  
6 like. Mr. Hardison has it already.

7 THE COURT: Did Judge Batts hear argument like this?

8 MR. HARDISON: No, she didn't. So she is quite  
9 unaware of our side of the situation here. That may change.  
10 We will see.

11 MR. HEARD: They filed motion papers before Judge  
12 Batts. She is aware of it because she says in her order that  
13 she denies the motion as moot.

14 I would like to hand that up to the Court.

15 THE COURT: I would appreciate that.

16 OK. Thank you.

17 (Adjourned)

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